

## APPEAL NO. 010428

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 6, 2001. The hearing officer resolved the issues at the CCH by determining that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and did not, therefore, have disability. The hearing officer further decided that the respondent (carrier) was relieved from liability pursuant to Section 409.002 of the 1989 Act because of the claimant's failure to timely notify his employer pursuant to Section 409.001 of the 1989 Act. The claimant appeals on sufficiency grounds and requests reversal. The carrier responds and requests that the Appeals Panel affirm the decision and order of the hearing officer.

### DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on \_\_\_\_\_. The only evidence in the record that an injury occurred that day is from the testimony of the claimant. The claimant testified that the cause of his left shoulder injury may even have been another, compensable injury he suffered in \_\_\_\_\_ and not, as claimed here, because of repetitive trauma caused by his work assembling boxes on \_\_\_\_\_. He testified that he did not know.

Since we affirm that the claimant sustained no compensable injury, he did not have disability. Section 401.011(16) of the 1989 Act. Therefore, the hearing officer did not err in finding that the claimant had no disability.

The hearing officer did not err in concluding that the carrier was relieved from liability because the claimant had not timely reported his alleged injury. Pursuant to Section 409.001(a), the claimant was required to report his injury no later than the 30th day of its occurrence or, pursuant to Section 409.002 of the 1989 Act, the carrier is relieved of liability for the claimant's alleged injury.

The testimony of Ms. B, the human resources manager of the employer, supports the hearing officer's decision in that she was the one to whom a workers' compensation claim was ultimately brought. There was conflicting testimony on this issue. Ms. B testified that neither the claimant, his supervisors, nor the safety manager, Mr. R, reported an incident regarding the claimant on \_\_\_\_\_, or any other date, with respect to an on-the-job injury to his left shoulder. In addition, Ms. B testified she did not know of the alleged incident until September 2000, beyond 30 days after the alleged date of injury, \_\_\_\_\_. Also supporting the hearing officer's decision is the claimant's Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) which is dated August 8, 2000, outside of the requisite 30 days of his alleged injury. The claimant testified that he did, in fact, file his TWCC-41 on August 8, 2000, but that he had given

actual, verbal notice of his alleged injury to Mr. R, and to one of his supervisors, Mr. A on the day of or within a few days of the claimed \_\_\_\_\_ incident.

Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not upset the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Susan M. Kelley  
Appeals Judge